IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1796 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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CHANDRIKABEN RAMLAL KHAVAS - Petitioner(s)
Versus
HARSHAD PUNAMCHAND DESAI - Respondent(s)

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Appearance :
MR AR MAJMUDAR for Petitioner(s) : 1,MR NK MAJMUDAR for Petitioner(s) : 1,
MR JV MEHTA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 13/06/2007

ORAL JUDGMENT

1. The petitioner – original defendant has filed this petition under Article-227 of the Constitution of India challenging the order passed by the Executing Court i.e. learned Additional Judge, Small Causes Court, Vadodara on 3.1.2006 in Rent Darkhast No.3 of 2002 allowing the Execution Application and rejecting the objections raised by the petitioner and issuing Jangam and possession Warrant against the petitioner. The petitioner has prayed for either quashing or setting of this order or remanding the matter to the Executing Court to decide it afresh after considering her objections and after the decision on her restoration application.

2. This Court has issued rule on 11.2.2005 and

by way of an interim relief, the respondent was directed not to execute the decree any further and he was further directed not to transfer, alienate or alter the premises taken over by him under the execution proceedings filed to execute the decree drawn in HRP Suit No.150 of 1998. The Court has also called for the files of HRP Suit No.150 of 1998, Execution Petition No.3 of 2002, HRP Suit No.32 of 1998 as well as Misc. Application No.9 of 2002, whereby the present petitioner has prayed that the ex parte decree drawn be quashed and set aside. The records and proceedings are lying with this Court since then.

3. Heard Mr.Suthar, learned advocate appearing for Mr.N.K.Majmudar, learned advocate for the petitioner and Mr.J.V.Mehta, learned advocate appearing for the respondent.

4. The brief facts giving rise to the present

petition are that the present respondent has filed suit being Rent Suit No.150 of 1998 for taking the possession of the suit premises and to recover the arrears of rent from the petitioner. Prior to filing of the suit by the respondent the petitioner has filed HRP Suit No.32 of 1998 wherein injunction application was moved which has been rejected and against that order, appeal was preferred wherein stay was granted by the Appellate Court. Despite the fact that the suit filed by the present petitioner prior in point of time, suit filed by the present respondent being Rent Suit No.150 of 1998 came to be decided exparte. The petitioner's advocate did not remain present. The petitioner was under the impression that the suit proceedings were pending and under that impression, she could not adduce the evidence and could not enter into the witness box and could not make payment of rent. During the suit proceedings, decree came to be passed in

favour of the present respondent. Against that exparte decree, the petitioner has filed an application being Misc. Civil Application No.9 of 2002 in the Court of learned Small Causes Court Judge, Baroda wherein it was prayed that the execution, implementation and operation of the judgment and decree passed in Rent Suit No.150 of 1998 be stayed. Though the restoration application and the petitioner's Rent Suit No.32 of 1998 were pending, the respondent has filed Darkhast No.3 of 2002 wherein judgment and order was passed by the Executing Court on 3.1.2005, overruling the objections filed by the petitioner, which is under challenge in the present petition.

5. Mr.Suthar, learned advocate appearing for the petitioner has submitted that the learned Executing Court should not have passed such an order in view of the fact that the restoration application was pending before

the learned Small Causes Court. He has further submitted that originally the premises in question was let out at the monthly rent of Rs.200/-. Thereafter, the premises was purchased by the respondent and he pressurized the petitioner to pay rent of Rs.800/- per month. Pursuant to an ex-parte decree for possession, payment of arrears of rent and mesne profit, Executing Court has passed an order on 3.1.2005. Possession and jangam warrants were issued and possession of suit premises was taken. He has further submitted that if the restoration application is allowed or even the decree is passed in favour of the petitioner in the Rent Suit No.32 of 1998 filed by her, the impugned order passed by the Executing Court would not survive. He has, therefore, submitted that this Court should quash and set aside the impugned order.

6. Mr.J.V.Mehta, learned advocate appearing

for the respondent on the other hand supported the order under challenge and submitted that the decree was passed in 2002 and Executing Court has passed an order in 2005. During this period neither any amount of arrears of rent has been paid by the petitioner nor she has taken any care to see that the restoration application may be urgently heard. Hence, this Court should not interfere in the order passed by the learned Executing Court.

7. After having heard learned advocates appearing for the respective parties and after having gone through the order under challenge and the memo of petition as well as affidavit in reply, the Court is of the view that considering the pendency of restoration application, the interest of justice would better be served if the impugned order passed by the executing Court is quashed and set aside and the matter is remanded back to the

Executing Court to decide it afresh only after the restoration application is decided by the learned Small Causes Court before whom it is pending. However, before the restoration application is decided, the petitioner shall have to deposit the entire arrears of rent at the rate of Rs.200/- p.m. This is an interim arrangement keeping all rights and contentions of the parties open. The amount shall be deposited with the Executing Court within period of two months from the date of this order and on deposit of the said amount it is open for the respondent to withdraw the said amount. As far as possession of suit premises taken by the respondent from the petitioner is concerned, the interim order passed by this Court on 11.2.2005 directing the respondent not to transfer, alienate or alter the premises, shall remain in operation till the restoration application is decided. The learned Small Causes Court Judge before whom

restoration application is pending is directed to dispose off the said application as expeditiously as possible, preferably within the period of six months from the date of deposit of the arrears of rent. It goes without saying that if the amount of arrears of rent is not deposited within the time granted by this Court, this order shall stand revoked and the order of the Executing Court shall stand revived and it shall accordingly be implemented.

8. It is made clear that the Court has not gone into the merits of the matter nor expressed any opinion on the issues involved therein. Hence, consequent upon the decision of restoration application, any order that may be passed either by the Executing Court or the Court trying the suit, shall be open for challenge by the aggrieved party before the appropriate forum.

9. Records and proceedings called for by this Court, should immediately be sent back to the concerned Court.

10. Subject to the aforesaid observations and directions, this petition is accordingly disposed off. Rule is made absolute to the aforesaid extent without any order as to costs.

(K. A. PUJ, J.)

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